

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

JONATHAN MCPHEE,)	
)	
Plaintiff,)	Civil Action No. 1:18-cv-00322-LM
)	
v.)	
)	
SYMPHONY NEW HAMPSHIRE)	
)	
Defendant.)	
)	

**PLAINTIFF'S MOTION FOR SANCTIONS
PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 37**

Plaintiff Jonathan McPhee submits the within Motion for Sanctions Pursuant to Federal Rule of Civil Procedure 37, and states as follows:

1. On June 8, 2018, Jonathan McPhee propounded discovery on SNH.
2. SNH failed to undertake a good-faith effort to locate responsive documents, failed to take prompt action to produce omitted documents once it became apparent its initial production was incomplete, and repeatedly only produced the documents after McPhee found evidence they existed.
3. The delay caused by these discovery failures severely prejudiced McPhee; McPhee received the documents, many of which were highly relevant and helpful to his claims, only after discovery was closed and SNH's Motion for Summary Judgment was fully briefed and ripe for ruling.
4. On October 18, 2019, SNH produced 49 documents that had not been produced before and that were responsive to the discovery requests propounded on June 8, 2018.
5. On November 7, 2019, SNH produced 71 documents that had not been produced before and that were responsive to the discovery requests propounded on June 8, 2018.

6. For the reasons set forth in McPhee's Memorandum of Law attached hereto, SNH should be sanctioned for its discovery violations.

7. McPhee requests that the Court schedule a hearing on this motion.

8. Counsel for SNH does not assent to the relief requested in this motion.

WHEREFORE, the Plaintiff respectfully requests that this Honorable Court:

- A. Schedule a hearing on this motion;
- B. Grant McPhee default judgment on his Defamation claim;
- C. Strike portions of SNH's Motion for Summary Judgment;
- D. Order SNH to use a third party vendor to collect and produce documents;
- E. Preclude SNH from using the newly produced documents at Trial or otherwise;
- F. Permit McPhee to take additional depositions;
- G. Award attorneys' fees; and
- H. Grant such further and other relief as may be equitable and just.

Respectfully submitted,

JONATHAN MCPHEE, Plaintiff

By His Attorneys

UPTON & HATFIELD, LLP

Date: November 15, 2019

By: /s/ Lauren S. Irwin

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon counsel of record via ECF system this date.

Date: November 15, 2019

/s/ Lauren S. Irwin

Lauren S. Irwin